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Report on the activities of the Office of Internal Oversight Services

Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008

Summary

The Procurement Task Force of the Office of Internal Oversight Services (OIOS) addresses cases of procurement fraud and corruption in the United Nations, including at Headquarters, in the various peacekeeping missions and at offices overseas. The Task Force has been responsible since its creation for examining all procurement cases in OIOS. This effort has been handled by a team of 10 to 18 investigators, as well as a Chairman and two support staff. The report of OIOS on the activities of the Task Force in its first 18-month period, ended 30 June 2007, is contained in document A/62/272.

Since its inception in 2006, the Task Force has been assigned an extraordinary caseload of 437 cases, completing 222 investigations and issuing 29 significant reports with an average length in excess of 80 pages with extensive footnotes and evidentiary detail, and more than 100 additional shorter investigation reports issued in summary form. These results were achieved despite the temporary, short-term nature of its mandate, which in turn caused a fairly rapid staff turnover. The disruption was most severe at the end of 2007 following the extremely late decision on the funding for the Task Force for 2008, which in turn resulted in the departure of investigators and interference with ongoing operations.

During the reporting period, the Task Force has reported on five significant fraud or corruption schemes in cases with an aggregate contract value in excess of $20 million.[1] As a result of the Task Force's work, a total of 22 vendors have been sanctioned by the Administration in the reporting period. Since its formation, the Task Force has identified more than 20 significant fraud and corruption schemes in cases with an aggregate contract value in excess of $630 million.

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The Task Force has continued to focus on allegations of corruption and fraud in procurement in the peacekeeping missions and overseas offices, as well as cases at Headquarters. Investigations have identified improprieties, corruption and malfeasance in the General Assembly-mandated review of the pay and benefits system; a steered contract for air charter services in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), a scheme to steer multiple contracts to preferred vendors in offices in the United Nations Office for Project Services (UNOPS) Nairobi; the improper use of consultants in the Department of Economic and Social Affairs and significant cases in UNOPS Afghanistan and the Economic Commission for Africa, which are currently ongoing.

After the completion of investigations, a number of cases have been recommended for referral to national authorities for criminal prosecution, or for consideration of subsequent legal action. The Task Force has also recommended that the Organization seek civil recovery of monetary damages in a number of cases.

The Task Force's focus on serious issues has meant concentration on cases involving allegations of vendor misconduct, including corruption in United Nations contracts, bid rigging, favouritism and collusion. The Task Force has conducted numerous investigations of vendors and OIOS has as a consequence made recommendations to the Organization on these matters, as summarized at the end of the report and in the previous report (A/62/272). These matters have involved investigations of vendors doing business at Headquarters and a number of peacekeeping missions, overseas offices and agencies, including MONUC, UNOPS (Nairobi), the United Nations Offices at Nairobi and Geneva, the United Nations Stabilization Mission in Haiti, the United Nations Integrated Office in Burundi, the International Criminal Tribunal for Rwanda, the United Nations Mission in the Sudan and the United Nations Mission in Liberia.

Through its investigations, the Task Force has also assisted the Vendor Review Committee, the Procurement Division, the Headquarters Committee on Contracts and the Controller in numerous vendor cases and issues. The majority of the subjects of the Task Force's investigations — including staff members and vendors — were based in North America and Europe.

Further, in 2008, on the basis of the Task Force's experience in the cases it had investigated, along with its analysis of comparative international investigative bodies, OIOS formally made recommendations and proposed amendments to the system of vendor sanction, rehabilitation and reinstatement.

The Task Force is funded only until 31 December 2008. It is clearly not possible to complete the Task Force's caseload and its ongoing investigations by the end of the calendar year. More than 150 cases will certainly remain, including a number of fraud and corruption matters. Further, the Task Force will not be able to reach and examine procurement cases and allegations in all of the overseas offices and peacekeeping missions within this time frame, and several significant matters will remain in these locations as well as at Headquarters. It is expected that additional cases will continue to be referred, and there certainly will be a need to

address these additional matters. The intention of OIOS is to transfer the remaining caseload of the Task Force to its Investigations Division at the beginning of 2009 and to ensure the required skill and capacity in the Investigations Division.

[1] These figures are approximate, as in many cases precise calculation is not possible. The amounts cited are not the "loss" to the Organization but the total value of the contracts which have been tainted by corruption or fraud.

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I. Introduction

1. The Procurement Task Force of the Office of Internal Oversight Services (OIOS) was established on 12 January 2006 in response to the perceived problems in procurement identified by the Independent Inquiry Committee into the United Nations Oil-for-Food Programme, the arrest and conviction of a former procurement officer and a procurement audit completed by the Internal Audit Division of OIOS in December 2005, which identified serious deficiencies and malfeasance in United Nations procurement. In addition, the creation of the Task Force supported, and continues to support, the Organization's ambition to address and fight corruption throughout the United Nations.

2. The Task Force operates as part of OIOS and reports directly to the Under-Secretary-General for Internal Oversight Services through its Chairman. The mandate of the Task Force is to investigate all cases involving procurement bidding exercises, procurement staff activities and vendors doing business with the United Nations.

3. In the course of its investigations over the past two and a half years, the Task Force has identified multiple instances of fraud, corruption, waste and mismanagement at United Nations Headquarters and in peacekeeping missions. The Task Force has completed 222 investigations. The aggregate contract value for the cases investigated or under investigation by the Task Force exceeds $2 billion. Since the inception of the Task Force, the aggregate value of the contracts identified as tainted by some form of corruption, fraud or malfeasance exceeds $630 million. More than 60 per cent of the Task Force's cases concerned procurement in various United Nations peacekeeping missions, while approximately 40 per cent addressed procurement-related matters at United Nations Headquarters and other offices.

II. Summary of activities

A. Caseload

4. In the reporting period, the Task Force received 64 procurement-related cases. This caseload supplements the 373 cases referred to the Task Force in the first 18 months of its work (which includes the inventory of procurement-related cases in the Investigations Division of OIOS from 2000 through 2007, transferred to the Task Force), which continue to be addressed. Additional matters continue to be identified on the basis of further reviews of procurement operations and allegations lodged by staff, managers and vendors. The Task Force has also been requested to assist the Investigations Division in a number of additional matters.

5. The Task Force's investigations have focused primarily on significant subjects (vendors, contracts and individuals). As the Board of Auditors confirmed during its review, approximately 60 per cent of all companies investigated by the Task Force since its inception are domiciled in North America and Europe.

B. Human resources

6. The Task Force currently retains 19 investigators representing a variety of professional backgrounds and relevant experiences, and 13 nationalities. It is a diverse group, which is especially significant in light of the fact that only short-term, temporary contracts are able to be offered and the sole duty station is New York. Significant efforts have been made to recruit exceptionally qualified candidates from diverse backgrounds and geographic locales.

C. Future and expiration of the Task Force

7. It is expected that the Task Force will issue at least eight more substantial reports of investigation before the end of 2008, covering a number of fraud and corruption matters with significant contract amounts, including reports involving procurement in the Economic Commission for Africa, the United Nations Office for Project Services (UNOPS) in Afghanistan, and the United Nations Office at Geneva, and additional reports concerning the large peacekeeping missions. OIOS was requested by certain funds and agencies to investigate and, in one case, re-investigate particularly important and pressing procurement-related matters which were referred to the Task Force.

8. While the Task Force has worked and will continue to work zealously to conclude as many cases as possible by the end of 2008, it is quite evident that more than 150 cases are likely to remain to be addressed, including more than 50 cases in which there are allegations of some form of fraud or corruption. Further, the Task Force will not be able to reach all of the overseas offices and peacekeeping missions in which cases and allegations are present, or where there is a need to carefully examine the procurement function based upon numerous allegations made from a variety of sources.

9. As it is expected that cases will continue to be referred, there certainly will be a need to address these additional matters. The intention of OIOS is to transfer the remaining caseload of the Task Force to its Investigations Division at the beginning of 2009, and ensure the required skill and capacity in the Investigations Division.

III. Due process

10. In accordance with its terms of reference, the Task Force operates under the OIOS Manual of Investigation Practices and Policies, dated 4 April 2005. The Manual contains provisions on due process afforded to United Nations staff members during fact-finding investigations. Upon the appointment of the current Chairman in April 2007, the Task Force adopted supplementary policies to provide additional procedural protections to staff members beyond those stipulated in the Manual, as set forth below, based upon its own review of the judgements of the United Nations Administrative Tribunal.

A. Due process under the Manual

11. The Manual defines the process to which a staff member is entitled during the fact-finding investigations phase as "fairness" and specifies that the fairness requirements are met if a staff member, prior to the issuance of a report, is (a) made aware of the scope of the possible misconduct, including any possible new instances of misconduct which arose during the investigation; (b) given the opportunity to explain why his or her actions were proper; and (c) given the opportunity to respond to the allegations, including presenting evidence, explanations, information or witnesses.

B. Additional protections afforded by the Task Force

12. In addition to these requirements, the Task Force, on its own initiative, has supplemented its procedures by affording a number of additional protections to staff members, beyond those which are required by the OIOS Manual, in order to ensure absolute consistency with the jurisprudence of the United Nations Administrative Tribunal. Specifically, the Task Force implemented the following additional protections and procedures in April 2007:

(a) Staff members are invited to review and sign their records of conversations, and are entitled to propose amendments, edits and supplementary information to these documents; staff members are also afforded an unlimited opportunity to review these written documents. The same policy applies to the employees of United Nations vendors, although at the discretion of the Task Force (as reflected in the terms of reference for the Task Force);

(b) The subjects of an investigation are allowed to review certain evidence used by the Task Force in its investigation prior to the issuance of a final report;

(c) The subjects of an investigation are provided with notice of proposed finding letters prior to the issuance of a formal report. These letters include a detailed summary of the allegations, as well as the evidence and information identified by the Task Force which may support the allegations;

(d) As explained in the OIOS Manual — and as the Office of Legal Affairs has confirmed to OIOS — the current United Nations policies and procedures do not provide for the right to counsel in fact-finding investigations (i.e., investigations undertaken prior to formal charges of misconduct). However, under the current Task Force's policy, the subjects of an investigation are afforded the privilege to be accompanied at the interview by another acceptable individual at the discretion of the Task Force.

13. It should be noted that the scope of due process protections afforded to investigation subjects and witnesses by the Task Force exceed the practice of most other administrative investigative bodies.

C. Challenges

14. It has been a common feature of fact-finding investigations in the Organization that staff members have asserted — sometimes as a means to defend themselves against investigations — that their due process rights have been violated. Certain of

these challenges also have arisen as a result of misunderstandings of how due process rights apply in the context of administrative fact-finding investigations. It is also evident that misstatements concerning the scope and applicability of due process rights have been made in front of the Joint Disciplinary Committees and that these misunderstandings, in turn, have had a detrimental impact not only on investigations, but also on the effective administration of justice throughout the Organization. In one particular case, for example, a Joint Disciplinary Committee concluded that the Task Force had not afforded counsel to a staff member and the lack of counsel at the interview constituted a deprivation of the staff member's due process rights. Notwithstanding the fact that the staff member had never requested counsel, that no right to counsel in fact-finding investigations exists, and that the conclusion was factually incorrect, it was used to support sweeping allegations of due process violations by OIOS.

15. The right to counsel has been frequently raised in investigations. The Task Force has been advised formally by the Office of Legal Affairs that with regard to due process protections in its investigations, fairness does not entail the right of a staff member to have counsel's assistance during an interview during the investigations phase of any case. This position is supported by the OIOS Manual.

IV. Defining misconduct

16. OIOS maintains that certain types of severe performance failures constitute misconduct, and it is well within the discretion of the Secretary-General to make such a determination. OIOS has addressed this issue in substantial detail in a number of memorandums to the Office of Legal Affairs and the Administrative Law Unit of the Office of Human Resources Management. The position of OIOS is based on the analysis carried out by the Task Force of the jurisprudence of the Administrative Tribunal and the practice of the Secretary-General in disciplinary matters. It is axiomatic from a reading of the seminal cases in the Administrative Tribunal jurisprudence — including Judgement No. 1083, *Chinsman* (2002) and Judgement No. 1103, *Dilleyta* (2003) — that if a performance failure arises from conduct exceeding that of "innate in capacity or inefficiency", and particularly if it showed reckless indifference to the consequences of one's conduct, it is within the Secretary-General's discretion to find that such performance failure constitutes misconduct. As stated in *Chinsman*, *Dilleyta* and a number of other Administrative Tribunal judgements, a finding of financial loss, criminal conduct or even wrongful intent has not been a necessary requirement prior to a charge of misconduct.

17. In its recent audit of the Task Force, the Board of Auditors suggested that investigators should not review matters of mismanagement, and that any investigative capacity be used sparingly in this regard. This proposal is contrary to established jurisprudence in the United Nations and does not take into consideration that many investigations ultimately resulting in findings of mismanagement do not begin as such. Investigations of such matters are often initiated based upon an allegation of fraud or corruption. Allegations of mismanagement only are given lower investigative priority. However, the consequences of severe mismanagement, especially by senior officials, should not be minimized; not only does such conduct have direct negative effects, but it also causes other staff members, stakeholders, Member States and the public to lose confidence in management and, in turn, the Organization.

V. Investigative and reporting procedures

18. The Task Force's investigative efforts are designed to ensure accuracy to the greatest extent possible through comprehensive investigative procedures and an exhaustive verification and quality assurance process. All relevant complaints and cases within the Task Force's jurisdiction and authority are registered in the Task Force's case management system. In setting priorities, the Task Force considers various factors, including possible criminality and corruption, financial impact, and damage to the reputation of the United Nations. The complaint is carefully analysed, and investigators identify and collect relevant documents and evidence.

19. The Task Force's cases rely on evidence gathered from a variety of sources, both internal (United Nations documents and staff members) and external (outside vendors, former staff members, etc.), and are built upon the theory of corroboration (i.e., that to become findings, allegations must be verified and supported by independent and reliable evidence). Significantly, all relevant evidence is examined, including exculpatory evidence.

20. Prior to the completion of the investigation, the Task Force will interview the potential investigation subjects. During the interview, the Task Force will address the allegations that have been made and present any material and relevant evidence, especially that which may be potentially adverse to the staff member, to the subject for his or her comment. (It should be stressed that simply because an allegation is made against a staff member, the staff member is not automatically a "subject" of the investigation.) Following the interview, the investigators will prepare a note detailing the interview, termed a record of conversation. The staff member will be invited to review, propose edits and sign the record of conversation. The staff member's proposed edits and comments are incorporated into the record of conversation and all written comments by the subject are appended to the interview note.

21. If, after a thorough review, and after taking into account the staff member's position on the matter and the evidence collected during the investigation, the Task Force investigators — as well as the team leader and the Chairman — are of the view that the totality of the evidence establishes, prima facie, that the allegations constitute a violation of a rule, regulation or administrative issuance of the Organization, the Task Force notifies the staff member of the allegations in writing, through a notice of proposed findings letter, and invites the staff member to comment and respond. It should be noted that this letter is issued well in advance of the issuance of a report, and that it outlines the rules and regulations allegedly breached, as well as providing a full description of the evidence supporting the alleged breaches. In the notice of proposed findings letter, the subject is invited to comment on the proposed findings and encouraged to present evidence to the Task Force for further consideration. In addition, subjects are invited to review the documentation gathered by the investigators which may be used to support the Task Force's findings.

22. After a full consideration and analysis of any evidence and comments put forward by a subject, the Task Force drafts a written report. The Chairman and team leaders in the Task Force are consulted regularly during this process. Prior to issuance, the report, including all factual representations and conclusions, is subjected to a vigorous and independent verification and quality control process. In

the verification process, investigators who have had no direct involvement with the case verify each factual statement set forth in the report against supporting documents, which are compiled in verification binders. In cases where the report results in disciplinary proceedings, all supporting materials are transmitted to the Administrative Law Unit for further consideration. The Task Force has a dedicated report editor whose sole function is to assist in the drafting of the reports to ensure accuracy, proper writing style and format.

23. After the completion of the verification process, a draft of the report is re-reviewed by the Task Force's Chairman and a copy is provided to the Under-Secretary-General for Internal Oversight Services for her review as well. If any substantive changes are suggested, the relevant sections are again verified by Task Force investigators. In each report issued by the Task Force, there has been unanimous agreement by the investigators, verifiers and the Chairman of the Task Force concerning the findings, conclusions and recommendations made in the report. After the review and approval of the final draft, the report undergoes a "clean read" process, which is designed to identify any remaining errors. This process is also accomplished by at least two other investigators or team leaders not associated with the investigation or earlier verification process. After all these steps have been completed (including verification and the clean read process), the report is issued through the Task Force Chairman and provided to the Under-Secretary-General for Internal Oversight Services. At this point, the responsibility of the Task Force and OIOS for the report ends.

24. If an allegation is not substantiated by the evidence identified by investigators, the Task Force may nevertheless issue a written report (following the vigorous drafting and verification process identified above), or it may close the case and notify the relevant department or office of its findings. It is the responsibility of department heads to notify staff of the results of investigations.

25. Thereafter, the Task Force is routinely called upon by the Administrative Law Unit to present comments and replies to submissions of the staff members against whom the Administration contemplates administrative action based on the Task Force's findings. Members of the Task Force also may be called upon to testify in any Joint Disciplinary Committee hearing which results from a charge of misconduct against the staff member, based upon the Task Force report.

VI. Vendor investigations and recommendations

26. In the course of its investigations of United Nations procurement, the Task Force has interacted with, interviewed and investigated a number of companies and agents of companies involved in business with the Organization that are alleged to have engaged in malfeasance. The Task Force has reported on investigations of numerous vendors engaged in or seeking to do business with the Organization. Through its experience, the Task Force has identified several areas where improvements in the United Nations regulatory framework should be made as a matter of urgency.

A. Cooperation of vendors with investigations

27. In 2007 and 2008, significant challenges were posed to Task Force investigations by vendors who refused or failed to provide relevant documents, make witnesses available or otherwise cooperate with reasonable requests — despite the fact that these companies enjoyed the privilege of conducting business with the Organization, often receiving substantial sums of money through contracts for provision of goods or services to the Organization.

28. On the basis of this experience, the Task Force has made repeated recommendations to the Office of Legal Affairs to amend the United Nations General Conditions of Contract. The proposed amendments were for the purpose of protecting the Organization from vendors engaged in malfeasance and seeking to take advantage of the Organization through corrupt or insidious means, and defeating audits and investigations by purposefully failing to produce relevant materials which are held in their exclusive custody and control. In January 2008, the General Conditions of Contract were amended to include a revised cooperation provision requiring all vendors to cooperate with the investigations carried out by the Organization with regard to United Nations-related commercial activities and extending beyond the termination of the contract. However, it remains unclear whether this provision covers subcontractors involved in providing goods and services to the United Nations, as subcontractors are not explicitly covered by the language.

29. OIOS had previously recommended — on the basis of the experience gained by the Task Force — that the United Nations Procurement Manual and vendor registration forms should similarly be updated to reflect the amendment of the General Conditions of Contract and to further strengthen and confirm the requirement of vendor cooperation (A/62/272). In that regard, OIOS notes that the Procurement Division has accomplished this in the reporting period by improving the Procurement Manual to include the requirement of vendor cooperation with investigations, as well as a requirement that vendors assert, as a condition of registration, that they — as well as their agents — cooperate with investigations.

B. Proposed amendments to the Procurement Manual and General Conditions of Contract

30. The existing provisions of the Procurement Manual concerning removal and suspension of vendors do not provide sufficient protection of the interest of the Organization, as they lack flexibility in addressing various types of vendor misconduct and various levels of cooperation with OIOS investigations. The Manual also does not sufficiently address the efforts of those vendors who institute ethics compliance and training programmes and otherwise make efforts to strengthen the integrity of their business practices.

31. On 12 June 2008, OIOS — on the basis the experience gained by the Task Force — presented recommendations to the Organization to further amend its Procurement Manual and General Conditions of Contract to provide for a more flexible range of sanctions that can be adapted to encourage greater compliance by vendors and to minimize the risk of loss to the Organization while also addressing the damage caused to the Organization's finances and reputation by fraud and

corruption. Also, these recommendations include provisions to reward cooperating vendors and limit sanctions for those who provide timely, complete and thorough assistance with investigations and make changes to business practices to prevent the recurrence of malfeasance and corruption.

32. The Task Force, drawing upon its own experiences in procurement investigations, also conducted an in-depth examination of comparable international organizations, including the Asian Development Bank and the World Bank, on these issues. One recommendation proposed was the expansion of the range of sanctions beyond that of temporary suspension and permanent removal, so as to include conditional non-debarment, debarment with conditions, financial compensation for any financial losses incurred by the Organization as a result of the vendor's wrongful conduct, and the ability of the Organization to fashion sanctions that take into account a vendor's extraordinary cooperation with an internal investigation. In addition, it was recommended that the General Conditions of Contract should be amended to place more comprehensive contractual obligations on vendors not to participate in corrupt practices and to comply with any sanctions imposed by the Organization. The expanded range of non-financial sanctions would allow the Organization to tailor sanctions to address the relative severity of the misconduct and minimize the loss to the Organization, as well as to reward vendors who have engaged in rehabilitation efforts.

33. Notably, the Task Force has already issued a number of reports recommending sanctions that go beyond the traditional sanctions regime currently employed by the United Nations (i.e., removal and suspension of vendors). For example, in three separate instances the Task Force has recommended reduced suspension periods based on the vendor's significant cooperation with the Task Force, self-imposed rehabilitation efforts and voluntary decision to separate the corrupt officials from the company's employ. The Task Force has also recommended conditional reinstatement for vendors that have agreed both to implement comprehensive ethics and compliance programmes and to abide by the Organization's requirements.

34. By providing for financial sanctions as well, the Organization would be able, in appropriate circumstances, to require that a vendor reimburse the Organization for financial losses, damages and the costs of investigation incurred by the Organization as a result of the vendor's wrongful conduct. (In some cases, vendors have offered, without solicitation, to pay for the costs of investigations.) In particular, by expanding the range of sanctions to include financial sanctions, and by conditioning ongoing vendor registration on an agreement to abide by those sanctions in the event that they are imposed, the Organization would be in a position to seek recovery of financial losses without having to resort to formal arbitral proceedings or external lawsuits, which are costly and time-consuming.

35. The need for the Organization to expeditiously address these issues continues to be of paramount importance as recoveries have yet to be made from vendors or staff who have been determined to have engaged in misconduct, corruption or fraud.

C. Vendor screening process

36. In its earlier report on the Task Force (A/62/272), OIOS recommended improvements in the vendor screening process. OIOS notes that the Procurement Manual and vendor registration documents have been improved to address some of

the concerns expressed by OIOS. However, further efforts are needed. The disclosure by the vendor of the identity of corporate officials, including its principal officers, and former corporate incarnations is critically important to the integrity of the screening, contract selection and sanctions process. Conflict of interest screening is also essential to ensure that the company has no connection with any United Nations staff member. Finally, there continues to be a pressing and continuous need to require the same level of disclosure with regard to the intermediary agent or subcontractor of the vendor and their agreements with the vendor as applies to the vendor itself. It should be made clear to vendors upon registration with the Organization, and at contract selection, that the acts and declarations of any agent should and will be deemed to be those of the principal. As has been repeatedly stressed by OIOS, on the basis of the experience of the Task Force, contracts have been assigned by winning bidders to subcontractors or assignees who did not participate in the bidding process.

D. Removal and suspension of vendors and dissemination of information

37. In its previous report on the Task Force, OIOS stressed the conspicuous need for improved information-sharing between different agencies, departments, funds, programmes, offices and missions of the United Nations, as well as a more robust response by all of these entities to vendor malfeasance when it is identified. While improvements have certainly been made by the Department of Management and the Procurement Division, and OIOS lauds their increased initiatives, the concern about information-sharing between the Secretariat and the funds and programmes still exists. When a vendor is sanctioned by the United Nations, it is essential that such a finding be disseminated to all concerned parties within the Organization and associated institutions, including the funds and programmes, and that appropriate action be taken. For sanctions to be meaningful, and indeed for the benefit of the overall reputation of the Organization, sanctions imposed by one organ of the United Nations should be honoured by all. There was a circumstance earlier in 2008 where a vendor was suspended by the Secretariat, only to gain a contract with one of the funds and programmes shortly thereafter.

38. Furthermore, as OIOS has previously recommended, the need continues to exist for the Organization to implement a vendor sanctions system which entitles the Organization — after due process is duly served — to publicly disclose its decisions on vendor sanctions. This would be beneficial in the fight against procurement fraud and corruption within the United Nations system and analogous institutions.

E. Sanctions of company officials, agents and intermediaries engaged in misconduct

39. The Task Force has noted instances in which principals of debarred companies simply reconstitute themselves in the form of a different corporate identity, through which they again seek to gain business from the Organization, and are able to do so on account of the fact that under the sanctions regime the Organization has in the past not removed individuals, but only companies, from the vendor roster. Under this system, individuals who are the main perpetrators of fraudulent and corrupt

schemes have been able to simply reconstitute themselves under a separate corporate identity. Indeed, in more than a handful of investigations, this circumstance has materialized, in that the individuals who were principally responsible for directing the misconduct were not debarred on an individual basis and later formed a different corporate entity to gain further United Nations business. For this reason, OIOS, through the Task Force, has repeatedly recommended that the current sanctions list include individual names as well as vendors. The Procurement Division is currently implementing an individual watch list.

F. Sanctions list for companies and individuals not registered as United Nations vendors

40. Under the existing sanctions regime, the Organization can only sanction companies registered as United Nations vendors at the time the misconduct is identified. However, in many cases the Task Force identified misconduct by companies (and company officials) not registered as active United Nations vendors. Consequently, the Secretariat was unable to institute removal or suspension proceedings, thereby allowing for the possibility of those companies registering as active United Nations vendors at a later point. Such situations could be addressed by creating a sanctions list which would include companies and individuals identified as having engaged in misconduct affecting the Organization but not registered as United Nations vendors at the time of the misconduct. The Task Force has discussed this proposal with the Procurement Division and it is being implemented.

G. Continued cooperation with the Procurement Division and its Vendor Review Committee

41. Throughout the reporting period, the Task Force has continued providing advice and assistance to the Vendor Review Committee of the Procurement Division. Specifically, the Task Force assisted the Vendor Review Committee in its review of the companies identified by the Independent Inquiry Committee into the United Nations Oil-for-Food Programme (the Volcker Committee) as having made payments to the former Government of Iraq in violation of United Nations sanctions, and conducted a number of other investigations at the request of the Vendor Review Committee and the Controller. The Task Force also assisted the Vendor Review Committee in its screening and evaluation of vendors and individuals seeking to do business with the United Nations.

VII. Implementation of the recommendations of the Task Force, referrals for prosecution and recovery actions

A. Recommendations

42. In the reporting period, the Task Force issued 68 recommendations, of which 25 were addressed to the Department of Management, 14 to the Office of Legal Affairs and 13 to the Department of Peacekeeping Operations. Of the recommendations issued in the reporting period, 21 have been implemented, 12 are in progress, 34 remain unaddressed and 1 was withdrawn. The 34 recommendations

that remain unaddressed include some matters which involve referrals of cases to national authorities and consideration of legal action to be taken by the Organization with regard to the recovery of funds.

B. Referrals to national authorities

43. Since criminal prosecution is outside the jurisdiction of OIOS, the client office, OLA, must work with the local authorities to refer a case and determine the appropriate measures of prosecution, restitution and recovery of damages. Despite the official status of OIOS recommendations, as noted above, a number of these recommendations have not been implemented expeditiously. This is a significant concern for OIOS, as failure to act promptly could inhibit any prospect for recovery of damages and prosecutions in cases where such action is appropriate.

C. Recovery actions

44. Since its inception, the Task Force has issued numerous recommendations concerning recovery of funds.

45. In certain instances, the identification of an exact amount of actual out-of-pocket losses to the Organization requires additional analysis by qualified experts. Any such analysis should include sums not only converted to others, but also those sums used for purposes not originally intended through management errors and misappropriations. In the civil law context, some courts typically assess damages in corruption cases not on the basis of the actual and direct loss figure, but rather on the basis of the entire value of the contract at issue, as a policy determination has been made that the intangible value of the integrity of the public institution and its processes has been vitiated. Indeed, under many statutes, and under many court decisions, it has been determined that actual monetary "loss" is not the appropriate measure of harm in a corruption case involving a public institution for these reasons. Further, it is well settled that corruption ultimately leads to losses even if not immediately identified, as prices of contracts tainted by corruption are typically inflated to account for the percentage paid to secure the contract, and perpetrators make up for reduced bids through other means including subsequent charges and amendments to the contract, as well as other acts. Further, certainly a vendor who has achieved a contract through corrupt means is unjustly enriched by virtue of the benefit of the contract itself.

46. Against this background it is a matter of concern that the Task Force's recommendations for recovery actions — supported by documentary evidence of fraud, corruption and misappropriation of funds resulting in losses and damages — have not been vigorously pursued.

47. The Task Force is aware of only two examples when recovery of funds has been actively pursued by the Organization, namely, the cases of two former United Nations procurement officers. Both matters arose out of recommendations by the Task Force and efforts to demonstrate that the United Nations could be recognized as a victim of the offences committed. In both of these cases, the Task Force repeatedly asserted that the United Nations should be recognized as a victim in the criminal proceedings in which these individuals were charged. After the Office of Legal Affairs referred the matter to outside legal counsel, the law firm examined the

issue and agreed with the Task Force's position, providing a legal opinion that the United Nations may well have a valid argument that it should be recognized as a victim of the offences in these two cases. As such, the firm has advanced arguments on behalf of the Organization to recover funds. The Task Force has assisted the Office of Legal Affairs and the outside legal counsel in their efforts in both cases. The recovery proceedings in both cases are ongoing.

48. With regard to the matters concerning one official, the Task Force identified that the official materially benefited from his corrupt conduct. Based on the Task Force's findings, the Organization has made a claim for restitution in the case for a total amount of over $4.6 million.

49. In all actions where there is loss, the Organization needs to consider and vigorously pursue recovery actions when adverse findings reveal the Organization to have been the victim of fraud or corruption by either a staff member or one of its contractors.

VIII. Major investigations: results and recommendations

A. Final report on a concerned United Nations staff member and UNOPS procurement

50. In an investigation at the United Nations Office for Project Services (UNOPS) (PTF-R012/07), the Task Force uncovered a scheme to defraud UNOPS and the United Nations. The scheme aimed at achieving contracts with an aggregate value exceeding $350,000 and lasted for over one year and involved the staff member, the spouse and companies associated with the spouse. The scheme was accomplished through the submission of purportedly independent bids from companies which appeared to be legitimate competitors, but, in fact, were colluding with one another and were entities associated with the staff member and the staff member's spouse. UNOPS executive management and counsel agreed with the findings and dismissed two staff members after they were afforded the opportunity to review the Task Force's report and respond thoroughly to the allegations. In addition, 12 companies participating in the scheme were removed from the list of registered vendors.

B. Report on a United Nations vendor

51. In its report on a United Nations vendor, dated 24 December 2007 (PTF-R013/07), the Task Force addressed a scheme in which several company officials attempted to secure a valuable United Nations contract under the Iraq oil-for-food programme in exchange for promises of sums of money to be paid to a former United Nations procurement officer and his close associate, a vendor intermediary and agent. As part of the scheme, the vendor obtained confidential United Nations documents and information concerning a valuable procurement exercise for a humanitarian goods inspection contract. In spite of the scheme, the company's efforts to obtain the contract were unsuccessful as the contract was awarded to another vendor. The procurement official has since resigned from the Organization and has been prosecuted criminally in connection with other corrupt conduct undertaken while serving as a United Nations staff member. The Task Force's investigation further established that several officials of the vendor provided, and

caused to be provided, false information to investigators in connection with the Security Council-sanctioned Independent Inquiry Committee into the United Nations Oil-for-Food Programme in November 2004. The Task Force recommended, inter alia, that the Organization take appropriate action against the vendor and its affiliates, taking into consideration the company's extensive cooperation with the investigation, its acknowledgement of wrongdoing and its agreement to implement significant safeguard and oversight measures, including ethics, anti-corruption and compliance training for all employees. The Task Force's recommendations were implemented by the Organization.

C. Report on a United Nations vendor, two former United Nations staff members and the review of the pay and benefits system mandated by the General Assembly

52. On 11 March 2008, the Task Force issued a 169-page report on a General Assembly-mandated project to review the pay and benefits system in the Organization and the scheme by United Nations staff members and vendors to improperly benefit from it (PTF-R014/08). The investigation revealed the scheme by two United Nations staff members to steer valuable contracts under the project to private entities with which they were associated, both during and after their employment with the Organization. In addition, the staff members used the United Nations project to gain business, in an individual capacity, from another international institution. The report further detailed that the staff members in question made false statements and material omissions to the United Nations in furtherance of their scheme, as well as improperly disclosed confidential documents and information to persons external to the Organization. The report concluded that the scheme compromised the integrity of the procurement process and that the participants engaged in personal business while employed by the Organization and billed expenses to the Organization that they should have borne personally. Further, the participants in the scheme attempted to obstruct the investigation by deleting software from United Nations computers in an attempt to erase relevant documents and files. Those efforts resulted in violations of procurement, financial and staff rules. The Task Force recommended, inter alia, that the Organization remove entities and individuals involved in the scheme from the list of registered vendors, as well as take appropriate action against the staff members in question. The Task Force's recommendations are being implemented by the Organization. The vendor is providing consulting services to other entities in the Organization, which are in the process of reviewing whether to extend the sanctions imposed by the Secretariat's Procurement Division.

D. Report on certain staff members of the Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre

53. On 13 May 2008 the Task Force issued its report on certain staff members of the Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre for Public Service Professionalism (PTF-R001/08). The report addressed misuse and deficiencies in the hiring of consultants for the Centre, the systematic failure of staff members in supervisory roles to ensure

that proper recruitment procedures were followed in connection to the engagement of consultants, a lack of care of the execution and management of trust fund monies in some instances, and the attempted misappropriation of funds. Those failings resulted in a risk of loss of funds entrusted to the Organization by one of the Member States under the budget of the Centre's trust fund. The Task Force recommended, inter alia, that the Department of Management consider whether disciplinary sanctions should be pursued against the staff members, and that the staff members and the Department make restitution to the trust fund for any losses. Three staff members have been charged with misconduct by the Office of Human Resources Management.

E. Report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi

54. On 6 June 2008 the Task Force issued its report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi (PTF-R002/08). As part of its investigation discussed in the report, the Task Force examined two separate procurement exercises. The investigation was launched on the basis of allegations of fraud and favouritism. The Task Force's investigation did not identify any evidence substantiating the allegations. However, in response to the issues identified during the investigation, the Task Force recommended, inter alia, that the Organization review the role of the responsible officials in the office, including the Executive Services Management Board — a body created to serve as a policy oversight entity — in connection with their respective roles in the procurement of goods and services to ensure consistency with the Procurement Manual and the overarching rules and regulations of the Organization.

F. Report on the procurement of aircraft for MONUC and two United Nations staff members

55. On 6 June 2008, the Task Force issued its final report on two United Nations staff members and the United Nations Organization Mission in the Democratic Republic of the Congo (PTF-R003/08). The report focused on a scheme to steer valuable United Nations contracts in connection with the Mission to a preferred vendor. As part and in furtherance of the scheme, two staff members provided the vendor with confidential United Nations documents and information. Although the Task Force did not find that the Organization suffered any monetary loss as a result of this scheme, it suffered damages as a result of the intentional effort to corrupt the procurement process of an international public institution, possibly cognizable in courts in certain jurisdictions. In such cases, damages may be recoverable irrespective of the proof of any monetary loss. It was recommended that appropriate action be taken against the two United Nations staff members involved in this scheme, and that sanctions be imposed against the vendor and the officials involved. The matter remains under review by the Department of Peacekeeping Operations and the Office of Human Resources Management.

G. Report on a United Nations staff member and related matters

56. On 20 June 2008, the Task Force issued its report on a United Nations staff member and related matters (PTF-R004/08). The report addressed several separate allegations of bribery and favouritism with regard to several procurement exercises at the United Nations Office at Nairobi. The Task Force's investigation did not identify any evidence substantiating the allegations against the staff member concerned and recommended that the staff member be cleared of the allegations.

IX. Efficacy of the anti-corruption initiative

57. The success of any anti-corruption initiative is equally dependent on the energetic and committed participation of all relevant offices in the Organization, and a functioning and effective system of administration of internal justice. Meaningful and effective partnerships must continue to be developed throughout the Organization with the committed participation of the Department of Management (including the Procurement Division and the Vendor Review Committee), the Office of Human Resources Management and the Office of Legal Affairs to pursue recoveries and sanctions and address misconduct. To this end, department heads and programme managers must take steps to seriously address issues of severe mismanagement. This combined effort also must operate within, and as a part of, a well-functioning system of internal justice which protects and promotes staff members' rights and enforces their obligations. The role of the Task Force and OIOS is just one component in this system and in the furtherance of this effort. Without the participation of all of these bodies, any initiative to promote ethical and sound business practices and to address and deter misconduct in contracting will certainly be minimal and ineffective, and continue to expose the Organization to tremendous risk.

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General for Internal Oversight Services

Annex

List of final reports completed during the reporting period

Serial No.	*Report reference No.*	*Date issued*	*Report title*
1	PTF-R012/07	15 August 2007	Final report on a concerned United Nations staff member and UNOPS procurement
2	PTF-R013/07	24 December 2007	Report on a United Nations vendor
3	PTF-R014/08	11 March 2008	Report on a United Nations vendor, two former United Nations staff members, and the General Assembly-mandated review of the pay and benefits system
4	PTF-R001/08	13 May 2008	Report on certain staff members of the United Nations Department of Social and Economic Affairs and the financial management of the United Nations Thessaloniki Centre
5	PTF-R002/08	6 June 2008	Report on electrical maintenance and travel services contracts at the United Nations Office at Nairobi
6	PTF-R003/08	6 June 2008	Report on the procurement of aircraft for MONUC and two United Nations staff members
7	PTF-R004/08	20 June 2008	Report on a United Nations staff member and related matters